

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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STATE OF NEW YORK ex rel. AMERICAN  
ADVISORY SERVICES, LLC,

Plaintiff-Relator,

-v-

EGON ZEHNDER INTERNATIONAL, INC. and EGON :  
ZEHNDER INTERNATIONAL AG, :

Defendants. :  
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21-cv-6883 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

Defendants have moved to dismiss the complaint in this case, which makes allegations under the New York False Claims Act. The complaint raises international taxation and transfer-pricing issues. It alleges that Defendant Egon Zehnder International, Inc. (“EZI USA”), which is an affiliate of the multinational Egon Zehnder International AG, falsely reported New York taxes due and owing by omitting income that should have been included in EZI USA’s gross income under the Internal Revenue Code and including expenses that should not have been included in EZI USA’s allowable expenses. Instead of reporting the income in the United States, Egon Zehnder International AG allegedly reported the income in lower-tax jurisdictions. The case thus raises questions of importance with respect to the administration of the federal and state tax systems that potentially transcend the interests of the parties to the lawsuit and as to which it would be helpful for the Court to have the views of the United States Treasury (or the United States Department of Justice) and the New York State Department of Taxation and Finance (or the New York State Attorney General).

It is thus ORDERED that the United States Treasury, the Department of Justice, the New York State Department of Taxation and Finance, and the New York State Attorney General are hereby invited to submit amicus briefs addressed to the following issues:

1. The scope and content of the permissible review of a federal taxpayer’s report of taxable income (and gross income and allowable expenses) on its federal income tax returns when that report is challenged in a private *qui tam* action brought under a state false claims act statute based upon a state tax provision that defines “entire net income” by reference to the entire taxable income the taxpayer is required to report to the United States treasury department. N.Y. Tax L. § 208(9).
2. Whether a *qui tam* relator may challenge through the vehicle of a state false claims act provision the calculation of federal taxable income that a relator would not be permitted

to challenge under the federal False Claims Act pursuant to the Tax Bar, 31 U.S.C. § 3729(e), and Section 7401 of the Internal Revenue Code.

3. Leaving aside the *qui tam* nature of this action, whether the New York Attorney General or the New York State Department of Taxation and Finance have the authority to challenge a taxpayer's calculation and report of taxable income on the taxpayer's federal income tax returns (and the allocation of income to the United States as opposed to a foreign affiliate) on the theory that the income on the federal income tax return is misreported and therefore the taxpayer's state income tax under Section 208(9) of the New York Tax Law is misreported or alternatively whether, to the contrary, the taxpayer's calculation of what it is required to report to the United States treasury department is deemed conclusive in the absence of a challenge to that calculation by the federal government.
4. Any other issues raised by the factual allegations of the complaint.

Defendants, as the moving parties, shall serve a copy of this Order on the United States Attorney's Office for the Southern District of New York and on the Office of the New York Attorney General, along with a copy of the complaint, Dkt. No. 1-5, and this Court's Opinion and Order dated March 22, 2022, Dkt. No. 41, within 7 days of the date of this Order. Amicus briefs are due 45 days from the date of this Order. The parties will be given 21 days to respond to any amicus briefs.

SO ORDERED.

Dated: March 23, 2022  
New York, New York



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LEWIS J. LIMAN  
United States District Judge